

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff

v.

CRIMINAL 05-0394 (JAG)

LUIS O. RÍOS-RODRÍGUEZ,

Defendant

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
RE: RULE 11(c)(1)(A) & (C) PROCEEDINGS (PLEA OF GUILTY)

I. Personal Background

On November 16, 2005, Luis O. Ríos-Rodríguez, the defendant herein, was charged in a three count-indictment. The defendant agrees to plea guilty to count three of the indictment. The United States agrees to dismiss counts one and two after sentencing.

Count three charges that on or about October 22-26, 2005, in the District of Puerto Rico, and within the jurisdiction of this court, the defendant did knowingly, possess and store stolen firearms and ammunition, as these terms are defined in 18 U.S.C. § 921(a)(3) and § 921(a)(17). All in violation of 18 U.S.C. § 922(j) and § 924(a)(2).

Defendant filed a motion for change of plea on November 16, 2006.

II. Consent to Proceed Before a Magistrate Judge

On December 5, 2006, while assisted by Assistant Federal Public Defender Víctor González-Bothwell, the defendant, by consent, appeared before me in order to change his previous not guilty plea to a plea of guilty as to count three of the indictment.

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In open court the defendant was questioned as to the purpose of the hearing being held. The defendant responded that the purpose of the hearing was to plead guilty. The defendant was advised of his right to have all proceedings, including the change of plea hearing, before a United States district judge. Defendant was given notice of: (a) the nature and purpose of the hearing; (b) the fact that all inquiries were to be conducted under oath and that it was expected that his answers would be truthful (he was also explained that the consequences of lying under oath could lead to a perjury charge); and (c) his right to have the change of plea proceedings presided over by a district judge instead of a magistrate judge. The defendant was also explained the differences between the appointment and functions of the two. The defendant consent to proceed before this magistrate judge.

III. Proceedings Under Rule 11, Federal Rules of Criminal Procedure

A. Compliance With Requirements Rule 11(c)(1)

Rule 11 of the Federal Rules of Criminal Procedure governs the acceptance of guilty pleas to federal criminal violations. Pursuant to Rule 11, in order for a plea of guilty to constitute a valid waiver of the defendant's right to trial, guilty pleas must be knowing and voluntary: "Rule 11 was intended to ensure that a defendant who pleads guilty does so with an 'understanding of the nature of the charge and consequences of his plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4 (1st Cir. 1995) (quoting McCarthy v. United States, 394 U.S. 459, 467 (1969)). [There are three core concerns in these proceedings]: 1) absence of coercion; 2) understanding of the charges; and 3) knowledge of the consequences of the guilty plea. United States v. Cotal-Crespo, 47 F.3d at 4 (citing United States v. Allard, 926 F.2d 1237, 1244-45 (1st Cir. 1991)).

United States v. Hernández-Wilson, 186 F.3d 1, 5 (1st Cir. 1999).

In response to further questioning, defendant was explained and he understood that if convicted on count three, the penalty for the offense charged is a term of imprisonment which shall not be more than 10 years, a fine not to exceed \$250,000, and a term of supervised release of not more than three years in addition

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3 to any term of incarceration pursuant to 18 U.S.C. §§ 924(a)(2), 3571, 3581, and
4 3583.

5 The defendant will pay a special assessment of one \$100, per count, as
6 required by 18 U.S.C. § 3013.

7 The defendant is aware that his sentence is within the sound discretion of the
8 sentencing judge and the advisory nature of the Sentencing Guidelines, including the
9 Guidelines Policy Statements, Application, and Background Notes. Also, the
10 defendant is aware that under Rule 11(c)(1)(C) of the Federal Rules of Criminal
11 Procedure, the court may accept or reject the plea agreement, or may defer its
12 decision as to its acceptance or rejection until it has considered the pre-sentence
13 report investigation. If the court rejects the plea agreement, the court shall, on the
14 record, inform the parties of this fact, and afford the defendant an opportunity to
15 withdraw the guilty plea, and advise the defendant that if the defendant persists in
16 a guilty plea, the disposition of the case may be less favorable to the defendant than
17 that contemplated in the plea agreement. In addition, as part of the terms and
18 conditions of this plea agreement, the parties agree that should the court reject the
19 plea agreement, the United States reserves its right to withdraw from its obligation
20 under the same.

21 Defendant was explained what the supervised release term means. It was
22 emphasized that cooperation with the United States Probation officer would assist
23 the court in reaching a fair sentence.

24 Emphasis was made on the fact that at this stage, no prediction or promises
25 as to the sentence to be imposed could be made by anyone. Defendant responded to
26 questions in that no promises, threats, inducements or predictions as to what
27 sentence will be imposed have been made to him.
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3 B. Admonishment of Constitutional Rights

4 To assure defendant's understanding and awareness of his rights, defendant
5 was advised of his right:

6 1. To remain silent at trial and be presumed innocent, since it is the
7 government who has the burden of proving his guilt beyond a reasonable doubt.

8 2. To testify or not to testify at trial, and that no comment could be made by
9 the prosecution in relation to his decision not to testify.

10 3. To a speedy trial before a district judge and a jury, at which he would be
11 entitled to see and cross examine the government witnesses, present evidence on his
12 behalf, and challenge the government's evidence.

13 4. To have a unanimous verdict rendered by a jury of twelve persons which
14 would have to be convinced of defendant's guilt beyond a reasonable doubt by means
15 of competent evidence.

16 5. To use the subpoena power of the court to compel the attendance of
17 witnesses.

18 Upon listening to the defendant's responses, observing his demeanor and his
19 speaking with his attorney, that to the best of counsel's belief defendant had fully
20 understood his rights, it is determined that defendant is aware of his constitutional
21 rights.

22 C. Consequences of Pleading Guilty

23 Upon advising defendant of his constitutional rights, he was further advised
24 of the consequences of pleading guilty. Specifically, defendant was advised that by
25 pleading guilty and upon having his guilty plea accepted by the court, he will be
26 giving up the above rights and would be convicted solely on his statement that he is
27 guilty.
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3 Furthermore, the defendant was admonished of the fact that by pleading guilty
4 he would not be allowed later on to withdraw his plea because he eventually might
5 disagree with the sentence imposed, and that when he were under supervised
6 release, and upon violating the conditions of such release, that privilege could be
7 revoked and he could be required to serve an additional term of imprisonment. He
8 was also explained that parole has been abolished.

9 D. Plea Agreement

10 The parties have entered into a written plea agreement that, upon being signed
11 by the government, defense attorney and defendant, was filed and made part of the
12 record. Defendant was clearly warned and recognized having understood that:

- 13 1. The plea agreement is not binding upon the sentencing court.
14 2. The plea agreement is an "agreement" between the defendant, defense
15 attorney and the attorney for the government which is presented as a
16 recommendation to the court in regards to the applicable sentencing adjustments
17 and guidelines, which are advisory.

18 3. The agreement provides a sentencing recommendation and/or anticipated
19 sentencing guideline computation, that can be either accepted or rejected by the
20 sentencing court.

21 4. In spite of the plea agreement and any sentencing recommendation
22 contained therein, the sentencing court retains full discretion to reject such plea
23 agreement and impose any sentence up to the possible maximum penalty prescribed
24 by statute.

25 Defendant acknowledged having understood this explanation.

26 E. Government's Evidence (Basis in Fact)
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The government presented a proffer of its evidence with which the defendant concurred.

Accordingly, it is determined that there is a basis in fact and evidence to establish all elements of the offense charged.

F. Voluntariness

The defendant accepted that no leniency had been promised, no threats had been made to induce him to plead guilty and that he did not feel pressured to plead guilty. He came to the hearing for the purpose of pleading guilty and listened attentively as the prosecutor outlined the facts which it would prove if the case had proceeded to trial.

IV. Conclusion

The defendant, by consent, has appeared before me pursuant to Rule 11, Federal Rules of Criminal Procedure, and has entered a plea of guilty as to counts three of the indictment.

After cautioning and examining the defendant under oath and in open court, concerning each of the subject matters mentioned in Rule 11, as described in the preceding sections, I find that the defendant Luis O. Ríos-Rodriguez is competent to enter this guilty plea, is aware of the nature of the offense charged and the maximum statutory penalties that the same carries, understands that the charge is supported by the government's evidence, has admitted to every element of the offense charged, and has done so in an intelligent and voluntary manner with full knowledge of the consequences of his guilty plea.

Therefore, I recommend that the court accept the guilty plea of the defendant and that the defendant be adjudged guilty as to count three of the indictment.

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This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B) and Rule 72(d) of the Local Rules of Court. Any objections to the same must be specific and must be filed with the Clerk of Court within five (5) days of its receipt. Rule 510.1, Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to timely file specific objections to the report and recommendation is a waiver of the right to review by the district court. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986).

At San Juan, Puerto Rico, this 13th day of December, 2006.

S/ JUSTO ARENAS
Chief United States Magistrate Judge